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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,

v.

Michael Lacey, et al.,  
  
Defendants.

No. CR-18-422-PHX-SMB

**UNITED STATES' RESPONSE TO  
VAUGHT'S MOTION TO STRIKE  
SURPLUSAGE FROM THE  
INDICTMENT (Doc. 785)**

The government responds in opposition to Defendant Vaught's Motion to Strike Surplusage from the Indictment. (Doc. 785.) The remaining five Defendants filed a lengthy joinder to Vaught's motion that provided additional arguments. (Doc. 794.) For the following reasons, both Vaught's motion to strike and the joinder should be denied.

1 First, the government does not plan on reading the Superseding Indictment or  
2 providing a copy to the jury. Accordingly, because the “purpose of a motion to strike under  
3 Fed. R. Crim. P. 7(d) is to protect a defendant against ‘prejudicial or inflammatory  
4 allegations that are neither relevant nor material to the charges,’”<sup>1</sup> allegations that are never  
5 read to the jury are not prejudicial and therefore need not be stricken. *United States v.*  
6 *Hedgepeth*, 434 F.3d 609, 613 (3d Cir. 2006); *United States v. Ballard*, 2007 WL 4365499,  
7 at \*2 (E.D. Cal. Dec. 12, 2007).

8 Second, even if the Superseding Indictment were to be provided to the jurors, it  
9 should not be stricken, because while facts in the charging document “may be somewhat  
10 prejudicial,” they should not be stricken if they are “relevant and material to the charge[d]”  
11 offenses. *Terrigno*, 838 F.2d at 373. Indeed, a motion to strike surplusage from an  
12 indictment is an “exacting standard” that should not be granted “unless it is clear that the  
13 allegations are not relevant to the charge and are inflammatory and prejudicial.” Charles  
14 A. Wright & Andrew D. Leopold, *Federal Practice and Procedure*, § 128, Amendment of  
15 Indictments; Surplusage (4th ed.). Here, the Superseding Indictment charged seven  
16 defendants with, among other things, a conspiracy to facilitate prostitution by helping run  
17 a website that was the leading source of prostitution advertisements on the internet. (Doc.  
18 230 at ¶1.) The allegations are relevant to the individual defendants’ knowledge and intent  
19 in committing the charged crimes. Further, the government intends to prove these  
20 allegations at trial. *See United States v. Turino*, 2016 WL 164991, at \*1 (D. Nev. Jan. 14,  
21 2016) (“if language in the indictment constitutes information that the government hopes to  
22 properly prove at trial, it cannot be considered surplusage no matter how prejudicial it may  
23 be as long as the information is legally relevant”). Defendant’s motion should be denied.

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28 <sup>1</sup> *United States v. Terrigno*, 838 F.2d 371, 373 (9th Cir. 1988) (citing *United States v. Ramirez*, 710 F.2d 535, 544-45 (9th Cir. 1983)).

1 Respectfully submitted this 27th day of November, 2019.

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5 s/ Andrew C. Stone

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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on November 27, 2019, I electronically transmitted the attached  
21 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
22 Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance  
23 as counsel of record.

24 s/ Angela Schuetta  
25 Angela Schuetta  
26 U.S. Attorney's Office  
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